

PAKISTAN AN ISLAMIC DEMOCRACY

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INTRODUCTION

Literature on Pakistan is scarce. Partly this is due to the fact that most of those who could write and tell the world about Pakistan are busy in the task of building up the new state—in settling refugees, in balancing the budget which, at one time was considered an impossibility, in bringing an orderly administration in areas like the Punjab which were left in a state of complete chaos at the time of Partition, and in tying up other large loose-ends of the great operation called Partition of India. But apart from the pre-occupations of some of her most gifted sons, Pakistan has not been able to state her point of view, because the problems that she has had to tackle are of an entirely novel type, and Pakistan's viewpoint is really in the process of formation. Here is a State carved out of the Indo-Pakistan sub-continent with the declared object of enabling Muslims to lead their lives according to their own ideals. Mr. Liaquat Ali Khan, the Prime Minister of Pakistan—on whose broad shoulders has fallen the mantle of the QUAID-I-AZAM, the founder of Pakistan—has repeatedly stated that this country is to function as “the laboratory of practical Islam”. The popular urge for converting Pakistan into a full-fledged Islamic State is only too visible; but even those Pakistanis, who are most enthusiastic about drawing, in every possible way, on the inspiration and wisdom of Islam are equally emphatic about building up a strong and progressive modern State. This is due to Pakistan being heir to the liberal traditions of Muslim India where Islam produced some of its most enlightened interpreters.

It should, however, be recognized that there exists considerable controversy regarding the ultimate shape of the constitution; it will not be easy to bring harmony in the conflicting viewpoints and will involve new adjustments and experiments. Engaged on a voyage, on an uncharted sea, clear indication has not always been available of the exact destination which the ship of the State will reach. "The laboratory of practical Islam" has started functioning, research is in progress, but what will be the finished product, is yet a matter of conjecture. In these circumstances the value and importance of Dr. Qureshi's speeches is obvious. His presidential addresses at sessions of the All-Pakistan Political Science Congress were not official pronouncements. On Pakistan's constitution only the Constituent Assembly can speak with authority and finality, but Dr. Qureshi's scholarship, the intellectual role played by him during the struggle for Pakistan, his membership of the Constituent Assembly, and his place in the Pakistan Government, naturally underline the importance of even the personal views expressed by him.

Dr. Qureshi's main thesis is that it is primarily for the legislature as the representative of the people of an Islamic State to apply the principles of Islam to the life of the community in the shape of legislation. This is of special significance in view of the practical problems, with which Pakistan is faced, and the indication it gives of the lines on which they may be solved, but it is worth noting that Dr. Qureshi's general attitude is fully in keeping with the traditions of progressive Islam, of which Shah Wali-ullah and Iqbal have been such able exponents in this sub-continent. Sir Mohammad Iqbal, the poet-philosopher of Pakistan, who not only placed the goal of Pakistan before the nation, but whose writings provide almost a blue print for the new State, has in

particular, expressed views very much similar to those of Dr. Qureshi. While drafting, in the late twenties, his lectures on 'Reconstruction of Religious Thought in Islam', Iqbal did not have the peculiar problems of Pakistan before him, but what he stated about *ijma* (consensus of opinion) has a direct bearing on the problems, with which Dr. Qureshi has dealt. Iqbal says :—

“The third source of Mohammedan Law is *ijma* which is, in my opinion, perhaps the most important legal notion in Islam. It is, however, strange that this important notion, while invoking great academic discussion in early Islam, remained practically a mere idea, and rarely assumed the form of a permanent institution in any Mohammedan country. Possibly its transformation into a permanent legislative institution was contrary to the political interests of the kind of absolute monarchy that grew up in Islam immediately after the fourth Caliph. It was, I think, favourable to the interest of the Omayyad and the Abbasid Caliphs to leave the power of *ijtihad* to individual *Mujtahids* rather than encourage the formation of a permanent assembly which might become too powerful for them. It is, however, extremely satisfactory to note that the pressure of new world forces and the political experience of European nations are impressing on the mind of modern Islam the value and possibilities of the idea of *ijma*. The growth of republican spirit, and the gradual formation of legislative assemblies in Muslim lands constitutes a great step in advance. The transfer of the power of *ijtihad* from individual representatives of schools to Muslim

legislative assembly which, in view of the growth of opposing sects, is the only possible form *ijma* can take in modern times, will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs. In this way alone we can stir into activity the dormant spirit of life in our legal system, and give it an evolutionary outlook."

In the course of his address, Dr. Qureshi has dealt with the suggestion "that the Constitution should provide for a body of learned theologians and jurists to veto any legislation that they consider to be against the Shar' ". Iqbal's observations on this point will be read with interest :—

"The Persian Constitution of 1906 provided a separate ecclesiastical committee of Ulema—' conversant with the affairs of the world '—having power to supervise the legislative activity of the Majlis. This, in my opinion, dangerous arrangement is probably necessary in view of the Persian constitutional theory. According to that theory, I believe, the king is a mere custodian of the realm which really belongs to the Absent Imam. The Ulema, as representatives of the Imam, consider themselves entitled to supervise the whole life of the community ; though I fail to understand how, in the absence of an apostolic succession, they establish their claim to represent the Imam. But whatever may be the Persian constitutional theory, the arrangement is not free from danger, and may be tried, if at all, only as a temporary measure in Sunni countries. The Ulema should form a vital part of a Muslim legislative assembly, helping and

guiding free discussion on question relating to law. The only effective remedy for the possibilities of erroneous interpretations is to reform the present system of legal education in Moham-medan countries, to extend its sphere, and to combine it with an intelligent study of modern jurisprudence ”.

With regard to the “authentic *ahadith* of the Prophet”, Dr. Qureshi says that “it is not so much an enlargement as an interpretation of the principles enun-ciated in the revelation (Holy Quran)”. Iqbal has made some very pertinent observations on this point also. After explaining why Imam “Abu Hanifah, who had a keen insight into the universal character of Islam, made practically no use of these traditions ” (“of a purely legal import ”) and “introduced the principle of *istahsan* (*i.e.* juristic preference)”, and expressing the view that “on the whole, the attitude of Abu Hanifah towards the traditions of a purely legal import is perfectly sound, and if modern liberalism considers it safer not to make any indiscriminate use of them as a source of law, it will be only following one of the greatest exponents of Moham-medan Law in Sunni Islam ”, Iqbal goes on to say :—

“It is, however, impossible to deny the fact that the traditionists, by insisting on the value of the concrete case as against the tendency to abstract thinking in law, have done the greatest service to the Law of Islam. And a further intelligent study of the literature of traditions, if used as indicative of the spirit in which the Prophet himself interpreted his Re-velation, may still be of great help in understand-ing the life-value of the legal principles enun-ciated in the Quran. A complete grasp of

their life-value alone can equip us in our endeavour to re-interpret the foundational principles."

Dr. Qureshi's concepts of Islamic Democracy and Islamic polity are based on the belief that Islamic ideology offers a definite pattern according to which a free and progressive life can be moulded. Islam offers an Ideal and a Direction. All States and societies are consciously or unconsciously built on certain ideologies. In all cultures there is a view of life and the universe and man's place in the world; this forms the basis of a way of life. Western democracies claim to be based on Christian ideology and the Communistic States have replaced all ideologies by dialectical materialism. Islam presents an ideology which is definite and distinct. It consists of belief in the sovereignty of God, the dignity of man and the purposive reality of all life. The eternal Creator creates eternally and sustains the values of life. From this it follows logically that all existence has an absolute as well as a relative aspect. Islam is primarily theistic and believes in the unity of all theistic religions, in spite of differences of rituals and laws. It is the thesis of the Holy Quran that rituals and laws have been changing according to the exigencies of the times, but the code of true religion has always remained the same. God has fulfilled Himself in many ways, 'lest one good custom should corrupt the world'. Life has an eternal aspect, but temporally it is an evolution and a growth which always transcends the systems that it evolves; the systems have their day and cease to be. Life brings forth systems and organizations which sustain and advance it; it is creative as well as adaptive. Of all forms of life human life is the most creative and most adaptive; the life of human communities depends for its enrichment and development on creation and purposive adaptation.

No creed can claim to be eternal which does not reflect these two aspects of life—Permanence and Change. Muslims believe Islam to be the eternal and universal religion. God in His eternal reality represents the permanent aspect but as a creator, his creation is an unceasing flux. His is **كل يوم هو في شان** as well as **الان كما كان** Existence, therefore, has a static as well as a dynamic aspect. Islam has synthesized both aspects and posited the reality of both.

When Islam was formulating its concepts and applying them to changing situations, it was progressive and adaptive to such an extent that the hostile critics of the Prophet accused him of opportunism. This was a false and unjust accusation. An opportunist is one who has no fixed principles and changes his principles to suit his personal interests. The Prophet of Islam had no personal interests; his only interest was to establish the unity of God and tenets of personal purity and social justice. He strove to bring into existence a society of free men, transcending all distinctions of race or economic status, free to think and act within the framework of a broad ideology from which followed as a corollary the unity of all existence and the unity of humanity. The principles of liberty, fraternity and equality were never formulated more clearly or practised more sincerely than in the society of free men that he created. He demonstrated to the world that life must be regulated by laws, but laws must not be allowed to become strait jackets or Procrustean beds. He abhorred unnecessary multiplication of laws and regulations. He was indignant with a person who put him too many questions for regulating the details of his life; he said, "most unjust towards humanity is the person who asks me too many questions about matters concerning which men have been left free. My position as a Prophet is such that my answers will become

binding for all, thereby depriving liberty". There is very little and in a good deal of this the varying circumstances. He but it was an open system and one. Apart from the fundamental he was a democrat who believed consultation. In all vital matters trusted companions and generally. In the Holy Book he is ordered to and it is given as one of the traits to decide vital matters by consultation religion which lays down so a principle of Democracy. In the liberty of the Faithful he gave constitution, though certainly he should form the basis of any welfare of opportunity; equality before all Muslims alike; freedom of conscience even for those who did not believe including the enemies; fulfilling individuals and nations, friendly principles are clearly promulgated. They were not merely utopian conspicuous hopes based on remote ideas adhered to and scrupulously practised by followers.

The Prophet nominated no one head of the State. He wanted to let the people to exercise their judgment. He gave that the Muslim State shall be a democracy in which people shall choose the best person to be at the helm of affairs. He shall be elected by the people and administer the State according to the principles of Islam, and every citizen shall have

imitating or assimilating. Owing to its own distinctive genius a good deal of it cannot be accepted by Islam; but all scientific or social progress should be assimilated with an open mind.

Dr. Newman has stated in the course of a lecture that Pakistan is perhaps the only Islamic country in which democracy is more than a mere constitutional and legal charter and means also a way of life. Even those who may not wish to make comparisons will agree that the great experiment in democracy that is going on in Pakistan is of importance not only to this country, but has a certain significance for the entire Muslim world, and in issuing Dr. Qureshi's addresses in the form of a pamphlet, we hope that they will be found to be of great importance and interest.

KHALIFA ABDUL HAKIM.

THE FUTURE CONSTITUTION OF PAKISTAN *

Ladies and Gentlemen,

I am fully conscious of the honour which the organisers of the Political Science Conference have done me by asking me to preside over your deliberations in connection with the constitution of Pakistan. In selecting me they have perhaps been guided by the fact that I have been a student and a teacher of Political Science and have now been called upon to add to my knowledge in the laboratory of practical politics. As a member of the Constituent Assembly it has been my privilege to participate in the various discussions regarding the framing of a constitution for Pakistan and, therefore, I have some knowledge of the problems which face the Assembly. It is the duty of all enlightened citizens to help the framers of the constitution by discussing these problems and I am certain that your deliberations will throw welcome light on the methods of their solution. It is invariably a great responsibility which any body of persons are called upon to shoulder when they are elected to frame a constitution for a country ; but in Pakistan

* Presidential address delivered at the Political Science Conference held at Lahore in December 1949.

this responsibility is further enhanced by the peculiar needs of the nation. In this short address I can only mention briefly the questions to which the Assembly has to find an answer. You, I am sure, will not expect me to divulge at this stage in which direction the minds of the members of the Assembly have been working and what progress they have made. I would also like to make it clear that any opinions which I may express are mine own and have no relation whatsoever to the ultimate decisions or even interim resolutions for which the Assembly may be responsible.

The constitution of a country must reflect the ideals on which its people want to base their political life. In Pakistan these ideals have never been debatable or ambiguous and have now been clearly set forth in the Objectives Resolution passed by the Assembly, with which all of you are familiar. The most outstanding feature of the Objectives Resolution is that the constitution of Pakistan shall be based on the ideals of Islam. The implementation of this decision, I would point out, requires the utmost circumspection and is beset with formidable difficulties. Broadly speaking, we are fully familiar with the ideology of Islam, but we have failed to keep abreast of the progress made by the world in the development of political institutions and the social fabric alike. We have now been suddenly faced with the great task of applying our ideology to modern needs. We have to tread warily on this path because there are many pitfalls of abysmal depth which we can avoid only by the greatest foresight and care. If Islam were simply a code of certain rigid laws or even legal concepts, it would, perhaps, have been easy enough to apply them to such spheres of political life as were covered by it. But Islam is a dynamic force, a concept of life, not of law, a guidance for the springs of thought and action and not a

But when for every action or institution we are expected to find a precedent, we are being asked to act in a most un-Islamic manner. We must distinguish from the principle the methods of its expression, from the spirit the form which the action to fulfil it had to take in those circumstances. To give you a parallel, whereas a person, who says that the Haj is a religious obligation, is speaking the truth, he would not be in his senses if he insisted that the journey must be made on camels and not by any modern vehicle of transport. A constitution, I must emphasise, is only an instrument, a vehicle for achieving certain ends. It should be such as can serve those ends, it is true, but it should not be considered to be the end in itself.

This group of the reactionary conservatives finds its counterpart among a section of our people who think that it is a mistake to talk of religion in the same breath with politics and that we are mistaken in adhering to concepts which are outworn and irrelevant to the present conditions of life. We need not take this view seriously, in spite of the seeming enlightenment and modernism of its advocates. It can be demonstrated easily that a polity which is not based upon the highest ideals of righteousness and justice is a danger not only to the country where it exists, but even to the rest of the world. However great may be the influence of Machiavelli in the politics of this century, there are no politicians or political thinkers who can deny the need of a reorientation of public life so that it may be based upon moral principles and values. Even those who ignore morality in certain aspects of their political activity have yet to base other aspects of their politics upon some moral consideration or other. I do not say that their principles are righteous, but I do claim that there are certain ideals, whether good or bad, which give them the motive power

to pursue their policies. The fundamental belief, whatsoever may be its source, does not cease to be an ideal when it is called by a different name. Let us face the question squarely. It is ultimately the innermost convictions of a people which shape its life. For us Muslims no morality exists which does not find its ultimate sanction in Islam. The moral concepts of our people are based upon the teachings of our religion. If, therefore, the polity of Pakistan is to be based upon a firm foundation of a righteous ideology, there is no motive force, but that of Islam which can act as the basis. To ask an overwhelmingly Muslim people to discard its innermost convictions in framing its constitution is to ask it to commit suicide. Therefore, there should be no doubt in the mind of any Pakistani, whether a Muslim or a non-Muslim, that the only enduring polity which can ensure justice and fairplay to all and which can make a contribution to the welfare of the humanity, can be one which is based upon the principles of Islam. For the sake of a handful of persons who may have come to disbelieve either in Islam itself or in its dynamic possibilities, this essential need cannot be overlooked.

Thus the only rational conclusion which emerges is that the Constituent Assembly was right in setting for itself the ideal of Islam as the main objective to be achieved in its constitution ; but this ideal should be given a rational, dynamic interpretation. It is in this matter of interpretation, as I said before, that our main difficulties lie. For one thing, the critics of my views may ask me how we can distinguish the essence from the form. In other words, how far is it possible to define the principles which should actuate an Islamic polity, and how far can we go in discarding precedents without injuring the principles ? Fortunately, so far as I can see, this question was answered for us in a most miracu-

lous manner by the Prophet himself. Some time before his death, in his last Haj, the fulfilment of his mission was proclaimed by revelation in the verse which heralded the completion of the faith for the Muslims. At that time it was realised by the Prophet as well as his companions that his mission having been fulfilled, his life in this world was also to come to an end ; and yet he did not define any institutions or lay down any definitive forms of Government for his people. This I take to mean that having, by his teachings and through revelation, given to his people an ideology, he abstained from laying down any hard and fast rules for organising the governmental or administrative machinery of his people. A complete code of principles was now in the hands of the community, but it was not fettered by any rigid rules in the matter of applying those principles to the needs of government. The foundations of the polity were laid in the Quran and the teachings of the Prophet, the edifice was to be built in accordance with the needs of the successive generations by the creative spirit of the Muslim peoples guided by the teachings of Islam. Is this action of the great exemplar not a clear guidance for us ? Does it not show us that for guidance in the matter of framing a constitution for Pakistan we should turn to the principles contained in the teachings of the Quran and the Prophet and should look upon precedents only as an ephemeral interpretation of those principles ?

So far as constitutional matters, as apart from moral behaviour and rules of conduct in certain circumstances, are concerned, we find two principles clearly narrated in the Quran. The first principle is that the Muslims should obey God, His Prophet and those who from amongst themselves are put in authority over them ; the other principle, repeated at various places, is that Muslims should co-operate in righteousness and justice, but never

in unrighteousness and injustice. These are important constitutional precepts which form the basic principles of good government. The first verse properly interpreted means that a Muslim's first duty is to God and he should do nothing which comes into conflict with that duty. He should not, whatsoever be the cost, compromise his allegiance to the clear injunctions of the Quran and the teachings of the Prophet by obeying any un-Islamic orders of the State. In other words, a really Islamic Government can never ask its people to carry out an un-Islamic policy or to follow an order which is in clear contravention of Islam. And this is further strengthened by the second verse which I have quoted. The basis of human action should be moral and not merely political. There should be no divorce between fundamental morality and political activity. This refers to States and individuals alike. A Muslim State should so frame its policies that it does not become an engine of oppression at home or a supporter of injustice abroad. The individual should refrain from any activity which is un-righteous, unjust or immoral. He must refuse to subordinate his moral principles to other considerations. This view carried to its logical interpretation confers the right of disobedience on the individual ; but then he should be quite clear in his mind that he is in the right. If he is in doubt, he must obey the government so that the bonds of discipline and unity are not broken asunder. Thus by a two-fold emphasis upon righteousness, Islam attempts to build up a righteous polity, but, having provided that, it expects complete discipline. Where it is absolutely clear that in obeying an order a man is likely to contravene an injunction of God, he must disobey, but in all other circumstances, he must abide by the dictates of the government.

It should, however, be emphasised that the right of disobedience is to be used only in extreme circumstances.

It is even possible to hold that this right does not exist. Having laid down a severe moral code for the State, it may be argued, Islam does not envisage any circumstances in which it can palpably deviate from the right path. The order to obedience is positive; the right of disobedience can only be inferred. Actually if the State is effectively prevented from disobeying the injunctions of Islam, the right of disobedience would automatically disappear. But has Islam provided effective safeguards against the deviation of the State from the right path? Legally it could have been laid down that a body of jurists would have the authority to declare any action of the government illegal, which ruling would be binding. But no such authority was ever set up nor envisaged, for the simple reason that Islam does not invest any body of jurists or lawyers with political power. This is in keeping with its refusal to set up a priestly class. Islam is a religion without any priests; it is a Faith, not a church; it trusts its followers and does not seek to set up human guardians over their conscience.

This is in accordance with the great political sagacity which the liberal creed of Islam has displayed in other fields. A State will remain Muslim to the extent and for the time that its people are Muslim. An Islamic State cannot be forced upon an un-Islamic people. Islam, therefore, concentrates on the necessity of making the people true Muslims and for this purpose has laid it down that there should always be a group of persons among the believers, who by their precept and example, hold aloft the torch of true Islam and preach righteousness and true belief, but these persons have not been given any political power, because Islam does not believe in compulsion which defeats its own purpose. The true safeguard against the State deviating from the path of truth is, therefore, an effective machinery for the

dissemination of true knowledge so that the mass of the people may abide by the ideals of Islam. Having provided that, Islam trusts the people to run the government in accordance with the tenets of the Faith.

The Government has, therefore, to be organised on a basis which makes it possible that all decisions should be the results of mutual consultation. This brings me to the third fundamental principle which has been clearly defined in the Quran. Muslims are expected to order their affairs by mutual consultation which is the basis of democracy. It is inherent in the idea of consultation that the majority view shall prevail and personal opinions shall be subordinated to discipline and requirements of unity.

These constitutional principles are not difficult to incorporate in a constitution. There is, however, a vast field of social and economic concepts which must find some expression in our constitution. These have been mentioned in the Objectives Resolution and deal mainly with social justice, fundamental rights and the treatment of the minorities. In these matters, once again, we will have to look to the principles rather than the specific legal provisions hitherto made by our jurists. If we are not able to differentiate between the essential and the accidental, we shall only be creating complications and difficulties for the nation. I must, however, sound a note of warning. Even when we succeed in framing a constitution which may, in so far as it is humanly speaking possible, create institutions and the atmosphere for the cultivation of Islamic virtues, we shall by no means have solved the problem. A constitution is only an instrument, a method of work, a form of procedure. It is neither the end in itself nor an effective method of achieving an end. It only, at best, removes the obstacles

from human effort in a particular direction. It is by no means the achievement of the ideal. There are many amongst us who believe that only by the enactment of a good constitution we shall have brought about an Islamic revolution. Revolutions are not the results of constitutions. Constitutions are the results of revolutions. It is the dynamic energy of the principles and of their adherents which can bring about a revolution. A constitution will not make true Muslims of our people, but if our people aspire to be true Muslims, they will achieve the end through the agency of almost any constitution and if that constitution does not help them in the achievement of that ideal, they will change it. Those who want to make Pakistan a truly Muslim country should concentrate upon the propagation of Islamic ideals and the education of our people.

I have dealt with this question at some length because it is the most fundamental of all our problems, but it is by no means the only problem. One of our great handicaps is that the vast majority of our people are uneducated and lack political experience. Political maturity and understanding cannot be inculcated in one day. The propagation of any ideals, whether religious or political, becomes exceedingly difficult when the percentage of literacy is so low as it is in Pakistan. Ultimately the political life of a people is the reflex of its social conditions. In large areas of Pakistan the mass of the people have no experience in working a democracy and yet we would be failing them if we do not give them political responsibility. Actually we are face to face with a dilemma. Unless you entrust your people with responsibility, they will never attain political maturity. If you do entrust them with political power when they do not know how to use it, you may be laying the foundations of unhealthy developments and, perhaps,

even chaos ; yet, I believe, the risk has to be taken, because there is no alternative. On no pretext would it be justifiable to deprive the vast majority of the people of a share in the government of their country. Of course, there are certain devices not unknown to political scientists to provide checks and balances to curb the possibilities of disorder, but it is not possible completely to remove the dangers inherent in such a situation. This factor alone makes it necessary that we should devote greater energy to the education of our people.

You would agree with me that geography and history alike demand that we should have a federal form of government. Besides, our population is so large that without decentralisation to some degree democracy would, even in a large parliament, become a farce. It is necessary, therefore, to divide the authority of the government between the federation and the units. In the structure of this federation we have one unit which has the majority of population, though in area it is small. In Western Pakistan there are several units of varying extent and importance, the total population of which is less than the population of Eastern Pakistan. For the purpose of maintaining an equilibrium, some method will have to be devised by which no unit feels completely lost in the federation, nor is any unit in a position to ignore the opinion of the majority of other units. Not only because of the federal form of government but also for creating this equilibrium, it will be necessary to have a bicameral legislature at the Centre. It is also obvious that the spheres of the authority to be assigned to the federation and the units will have to be clearly defined, leaving some field of concurrent jurisdiction, so that the possibilities of friction are minimised to the utmost. Even then a Federal Court to adjudicate

in cases of dispute is absolutely essential. I remember an interesting suggestion having been made that we might have a constitution in three tiers, but on close examination it would be found that this is a cumbersome method. It is obvious that there are certain subjects which must be dealt with centrally and certain others which must be dealt with by the units and the authority which can be assigned to the second tier is narrow and limited. It would be an unnecessary expense to set up legislatures or secretariats for the administration of a few subjects. Besides, a three-tier constitution cannot but weaken the centre without extending the autonomy of the unit and, therefore, I am afraid this idea will have to be discarded. Another suggestion which has been discussed in the papers, is that Western Pakistan should be organised into a single unit. A close examination would reveal that this is impossible for administrative and political reasons. I think there is no alternative to a pure and simple federation consisting of the present provinces and the acceding states. Some of the smaller states, however, would find it more convenient to group themselves for administrative purposes.

The Constituent Assembly will have to decide another matter of far-reaching importance, namely, the relationship between the executive and the legislature. There are some, who believe that the method of making the executive responsible to the legislature is not suited to Pakistan. They advocate the presidential system where the President is the head of the executive and is not responsible to the legislature. On close scrutiny it would be found that the objections which are raised against the responsible form of government apply with much greater force to the presidential form, so far as Pakistan is concerned. It is said that in the absence of two strong, stable and responsible political parties,

the cabinet form of government becomes a farce and stable government becomes a mere desideratum. It is said that there are already signs on the horizon which show that the emergence of strong political parties in Pakistan may be difficult and that the legislatures may be divided into small groups separated one from the other, either for personal or political reasons. They will coalesce and break off with kaleidoscopic rapidity and thus make stable government impossible. A young country like Pakistan requires a stable government more than anything else. When governments and ministers are so dependent upon small groups of legislators, the doors of corruption, nepotism and injustice are thrown wide open. Unfortunately all this is true and nobody can foretell whether the stabilizing influence of a big political party like the Muslim League will continue. Actually in some of our provinces even the prestige and discipline of the Muslim League have not proved sufficiently strong to stop intrigue and guarantee stable government. If this has happened so soon after the establishment of Pakistan, critics are justified in doubting the possibility of the emergence of any stabilizing force in the shape of a well-knit political party in the near future ; and yet it is not only in countries where the constitution provides for a responsible executive that the necessity of a clear and stable majority for the government in the legislature is necessary. Even where the executive is independent of the legislature, it has to depend for the execution of its policies on the co-operation of the legislature in many ways. A conflict between an independent executive and the legislature very often makes it difficult for the executive to carry out its duties smoothly. It is actually the cohesion provided by a big political party which makes it possible for an independent executive to function properly. Thus in the essential work of

government the absence of well-organised and disciplined political parties is almost equally injurious whatever be the relationship between the executive and the legislature. The only difference is—and this is of vital consideration in countries where the people have not reached the necessary standard of political maturity—that when certain elements in the political life of the nation consider it desirable to remove the executive, they can do so by voting against it, if it has to rely upon the confidence of the majority, but where an adverse vote cannot remove the executive, the issue is often forced by assassination, coup d'état or even a political revolution. It is much better that the political elements should, if they must act irresponsibly, have it in their power to remove the executive rather than be tempted to murder them and create much greater instability which may bring in its wake bloodshed and convulsions.

These are some of the more outstanding problems which face the Constituent Assembly. I have tried to enumerate them briefly, without anticipating what views are likely to prevail. There are a host of seemingly small questions which may prove of far-reaching importance, but they are too numerous to be mentioned in the course of a brief address. I, therefore, refrain from going into details ; some of them are bound to emerge in the course of our discussions. I, therefore, conclude my remarks and thank you sincerely for giving me a patient hearing. I do not expect that my views will find general acceptance, but if they stimulate constructive discussion, their expression will have served its purpose.

final authority. The people who make and unmake the parliament and can, if they so desire, dethrone the monarch are more powerful than the King and the Parliament. It is obvious, therefore, that they have a greater right to be called sovereign than the King and the Parliament. On further analysis, however, it appears that the people are not their own masters. They are swayed by propaganda, by their education, by their religious, social and political opinions, even by their prejudices and irrational feelings. The greater authority, therefore, vests not so much in the people, as in the feelings and opinions which sway them, and therefore those feelings and opinions are more potent than the people themselves. Are these feelings and opinions, then, the real sovereign in the United Kingdom? However, those various instruments, like the press, the pulpit, the school, even the playhouse and the cinema, which fashion and influence these opinions and feelings are more powerful. If we go on in this way searching for the real authority we shall find ourselves chasing elusive factors, one after another, in the search for the location of sovereignty.

Political Science, therefore, has laid down certain stages for defining the ultimate power. In political parlance, the highest legislative authority is the legal sovereign ; the body of the people who exercise the highest authority in the land are the political sovereign ; and those innumerable forces which sway the life of a nation and direct its activities are the real sovereign.

The real sovereign in all States are similar ; they are not necessarily the same. In Pakistan where the majority of the citizens are Muslim, it is obvious that Islam is a most potent factor holding a high place amongst the sharers of real sovereignty. But we should not

delude ourselves by thinking that Islam is the sole possessor of sovereignty in Pakistan. This would be tantamount to saying that we are so governed by Islam in our lives that each one of us is a true Muslim, that there are no influences at work in our mind except those of Islam. Actually such a claim would prove to be, in the final analysis, a plain contradiction. Islam has a total claim on all the aspects of our life, but the facets of these various aspects which have to be influenced by Islam are open to so many other influences ; indeed Islam has constantly to compete with them. There are some influences which do not come into conflict with Islam and, therefore, Islam does not rule them out ; there are some which we have to control to bring our lives into conformity with our faith. Actually without the multiplicity of influences on our lives the understanding of Islam would have been incomplete and unprogressive, and we would have been reduced to a state of being automatons. This fact has been recognised by Islam and it is because of the presence of the multiplicity of these influences that man has been raised to the status of the lord of creation.

This would be true even if each one of us were a true Muslim ; but in a society where allegiance to Islam varies from individual to individual and where its understanding is even more varied, it would be idle to claim that Islam is the real sovereign in Pakistan. In the technical sense in which I am using the word 'real sovereign', and I hope, there will be no misunderstanding on this point because of ignorance of the real meaning of the term, Islam is not the real sovereign. At best, it is only one of several factors which share sovereignty.

The political sovereign in Pakistan, like any other country, are the people. This does not come into conflict

with the idea of the sovereignty of God. God is sovereign in the universe and His will cannot be challenged by anyone. In that sense God is sovereign in every country, Muslim or non-Muslim. He is equally sovereign in those socialist countries where His authority is challenged and His existence denied as He is in countries where people prostrate themselves before Him five times a day in recognition of the fact that He is the sole arbitrator of their fates, their Creator and Master. But when we are talking of the real sovereign this idea does not remain relevant. In spite of the sovereignty of God there have been States, nations and communities which have denied His existence.

It is not inconceivable, howsoever improbable it may be, that the people of Pakistan may cease to believe in God. It is in the very nature of the freedom given by his Creator to man that he should be free to act in accordance with his beliefs and convictions. If the people of Pakistan—God forbid—stray from the path of the Truth, the sovereignty of God will not cease, but the authority of the people will direct the life in the country in entirely different channels. In a worldly sense, therefore, the people of Pakistan possess at present the final authority even to decide whether they shall be Muslims or not. It is, therefore, obvious that the people of Pakistan are as sovereign as the people of any other country because they can, if they so desire, make any decisions, for better or for worse.

The concept of legal sovereignty has been strong in the annals of Islam. Looking at the past, the Muslims have recognised the sovereignty of the law. No authority has been permitted to stand between the law and its majesty. The law of Islam—the *Shar'*—has been considered to be the final legal authority in all Muslim

countries. The highest executive in the land, the Caliph, or for that matter the Prophet himself, was not considered higher than the law. The law equally applied to every one because the Islamic conception of law is different from the Western conception.

In the West, the law is the will of the sovereign. In Islamic countries the law is the will of God. In this sense we might say that Islam recognises the sovereignty of God and, therefore, in a limited sense a Muslim State is a theocratic State. But the terms 'theocracy' as well as the sovereignty of God have been mis-applied in many communities and, therefore, they are not applicable to an Islamic State. Theocracy in the West is a kingdom of God where authority vests in specially ordained priests who exercise it on behalf of God. This is not the conception of Islam. Islam has no priesthood and, therefore, no special agents of God to administer the law which expresses His will.

It would be of some interest to us to analyse the position as envisaged by Islam and to remove the pitfalls which exist for the unwary in this quest. Islam envisages a Muslim people guided by the teachings of Islam in ordering its affairs. This community, for the purposes of convenience, elected, in the earlier days, a high executive, called the Caliph, to carry on the business of the State on its behalf. This executive of the State, the Caliph and later the Sultan, was only an agent to carry out the will of the people and the people, being Muslims, naturally demanded that their affairs should be conducted in accordance with their beliefs and convictions.

The *Shar'* included within its fold three main principles, two immutable and one mutable. The immut-

able principles are the *Qur'an* and the authentic hadith of the Prophet, the latter, according to the Muslims is not so much an enlargement as an interpretation of the principles enunciated in the revelation. The mutable factor is the interpretation of these principles which has been arrived at by the application of human reason to apply them to the changing needs of humanity in different conditions. It is wrong, therefore, to say that the *Shar'* is entirely immutable. The first two principles of it certainly are immutable, but, as I have pointed out, the third principle which is so necessary for the application of Islamic principles to our own lives must necessarily be progressive. In the body of Islamic law known to us today there is considerable contribution of this third principle and it needs re-consideration for being applied in circumstances which have so considerably altered.

The recognition of the legal sovereignty of a code of law has certain implications : one of these is that the courts would directly administer it without the interference of the legislature or the executive authority. This method was followed during the Middle Ages in all Islamic countries. But today there are very few countries where this conception prevails. Those Muslim countries which had to give up this practice had certain valid reasons to do so. As I have pointed out earlier, the *Shar'*, as it exists today, has a considerable corpus of judge-made law. Unfortunately, the tendency amongst Muslim jurists has been, like other judges, of basing their interpretation on the body of previous interpretations. This was healthy, because otherwise it would have been impossible to maintain a continuity of tradition in the Muslim legal system. However, after a lapse of many centuries, with changing conditions, whereas the immutable principles upon which the *Shar'*

is based continued to be valid, the line of reasoning which led to the interpretation of those eternal principles was not always in keeping with the progress that human knowledge had made. To leave the courts to decide what is in accordance with Islamic law, it is necessary to define Islamic law properly and to separate the grain from the husk. From such a complex mass it is not within the capacity of every lawyer or judge to extricate the basic principles; because this will in itself involve fresh interpretation. For the purposes of uniformity it is also necessary that a sound tradition should grow up and, if the judge-made law makes deviations either from the principles or the needs of the people, it should be possible to correct the mistakes through a different human agency.

This analysis brings us to the fundamental considerations which hold today in determining the legal sovereign in our new constitution. Should we accept the *Sharʿ* as it stands today without any re-interpretation or re-orientation? Should we have a legislature and what part has the legislature to play if the sovereignty of the *Sharʿ* is accepted? Would it be wise to put any limitations on the power of the legislature which may be enforced constitutionally? And, lastly, what should be the relationship between the legal sovereign that we may choose to accept and the political sovereign, on one hand, and the real sovereign, on the other? I will try to answer these questions according to my lights in the remaining portion of this address.

It has been recognised in all Muslim countries that in many respects the mutable part of the *Sharʿ* requires considerable overhauling and the immutable bases need a new interpretation. This feeling has been shared by some of the leading theologians of the Muslim world.

Therefore, it would not be in keeping with the progressive tendencies of Islam to recognise the Shar'ah in its present form as the legal sovereign; but until a new interpretation of the Sunnah as the legal sovereign is accepted by the people, the differences in interpretation are only difficulties but discrepancies which should be revised and made acceptable to the people through careful research, careful study and discussion amongst the people. If the problem is left entirely to the courts, it is obvious that the thinking and propagation amongst the masses will be only legalistic and not necessarily wise or sound; besides, to make it universally acceptable it is necessary in this twentieth century that every man should be able to take his own stand in the public forum so that he may accept the interpretation should be put in the national platform.

the combined judgment of the

one which it finds the most rational of legislation that a moral conscience of the people can be swayed in favour of the law, otherwise it will fail with the help of public moral conscience of the people. These preserve of a few law-judges, the law would be a dead letter. Treated as the cloak with public sentiment. Lawyers, theologians, jurists or the dictates of the *Shari'ah* gradually find itself in disharmony. Our theologians, our present attitude towards the Islamic legal system, will completely illustrate my point but have failed to spread the traditions of Islam because they have not trusted the people. The interpretation of the

They have considered the principles of Islam as their

taking the people into their confidence have created a wide gulf between their own views and the outlook of the intelligent sections of the nation. In every Muslim country, therefore, there has come into existence a wide gulf between the *ulema* of the orthodox schools and the intelligentsia. This has done great harm to Islam, because, as the result of this division, Islam has ceased to play that vital role in the life of the people which was its due. The intensity of these antagonisms varies from country to country and even in the same country from class to class but it does exist everywhere, yielding a most pernicious crop of laxity and indifference. It is a disease which must be rooted out from the body politic of Islam.

It is obvious that the only place where discussions can take place in connection with the re-interpretation and re-orientation of the *Sharʿ* is the legislature, because as the supreme representative of the people, the legislature alone can speak for them and accept on their behalf what seems rational and proper out of the mass of argument and commentary putting forward different points of view. Another happy result of these discussions will be that every problem shall come into the public forum and will be discussed from a million platforms ; and, as problems are discussed, they will sink into the subconscious mind of the people and ultimately become a part of their convictions. Thus interpretation and conviction will go hand in hand.

It has been suggested by some that the constitution should provide for a body of learned theologians and jurists to veto any legislation that they consider to be against the *Sharʿ*. This would be a most retrograde step, because then the responsibility of understanding and interpreting Islam will be limited to a few persons rather

than the entire nation. All the difficulties, which would arise if the courts are left with the interpretation of the Quran and the Sunnah, will be accentuated if a body like this is set up to control the activities of the legislature. Instead of harmony, it will create resentment and even rebellion.

It has been argued that none except those who are deeply steeped in legal knowledge and theology have the capacity to interpret the Quran. This is true in a limited sense ; when it comes to the application of a law to a case with legal nicety, the layman is at a grave disadvantage. The comprehensive principles and their broad application to the life of the community is not so technically legal. Only a lawyer can be a judge ; but a legislator need not be a trained lawyer. The legislator accepts principles which are given a legal garb by experts and a judge-made law grows up around that legislation.

It is, therefore, a mistake to think that only the *ulema* are capable of legislating in accordance with the principles enunciated in the Quran and the Sunnah. The last of the Prophets was born amongst a backward and uneducated people ; he did not limit his mission to trained jurists and lawyers. It is quite likely that the legislature may make mistakes, but these mistakes will be rectified in course of time. On the other hand if the interpretation of Islamic principles is to be based entirely upon authoritative rulings of judges and jurists, their mistakes will take long to rectify, for then the entire approach would be authoritative and not persuasive. For achieving a quick rectification of mistakes, the legislature will have to be left unhampered and it would be unwise to put any limitations on its authority.

This does not mean that our experts in Islamic learning and law will have no influence. Their learning

and piety will add authority to their opinion. There is, however, much difference between the authority which the opinion of an expert possesses and the legal sanction behind it. Once the opinions of a small body of experts begin to be vested with the authority of the law, the freedom of the mass of the people to choose from amongst the interpretations vanishes. Besides, persuasion and discussion are at a discount ; they gradually disappear. There is a danger of the emergence of a class or a set of persons vested with sacerdotal authority.

Islam does not tolerate the growth of a priesthood, nor does it encourage the division of the people into a clergy and the laity. Indeed no particular class has been given any authority to interpret the principles of Islam. The reason for this attitude is that the growth of a class vested with any sacerdotal authority or religious sanctity discourages the mass of the people from acquiring true knowledge of the Faith. Real knowledge becomes the monopoly of the few and creates indifference among the rest. Sometimes it even engenders hostility. Although the history of the *ulema* of Islam has been remarkably free from a class consciousness based upon selfish motives, yet there are many instances in which certain sections of the *ulema* have exploited their position to the detriment of the *millat*.

Islam envisages the Muslims as a secular society believing in the principles of Islam and, therefore, acting upon its precepts. It trusts the mass of the Muslims to do their duty. It does provide for discipline and goes even to the extent of punishing the black sheep, but so far as the Muslims as a community are concerned, they have been entrusted, and no one else, to organise themselves into an instrument for practising and propagating, by precept and example, the message that was de-

livered to our Prophet in its final form. There is a tradition of the Prophet which says that there shall be no consensus of opinion on an error amongst his people. This is not only a prophecy but is also the embodiment of the trust that Islam places in its followers. If the mass of the people are Muslims and their faith is sound, they will instinctively accept the correct interpretation. If they do not accept the correct interpretation and wilfully persist in error, it is obvious that no authority can put them right. The Muslim people, therefore, are the sole authority, guided, of course, by the advice of the experts, to decide which interpretation they would follow. The advice, however, has no binding authority. To leave the legislature unhampered, therefore, will be in keeping with the spirit of Islam.

By adopting this attitude Islam has acted in accordance with human nature. All philosophies and religions can thrive only on conviction and a voluntary surrender of the human will to their precepts. No conviction or religion can be forced upon a people. Attempts to do so result either in failure or in disasters. From the point of view of political philosophy, this attitude of Islam is not only correct but the very essence of wisdom.

From the analysis of the theory of sovereignty, which I have given in the beginning, it would be obvious that Islam seeks to establish complete harmony among the real sovereign, the political sovereign and the legal sovereign.

The legal sovereign shall be the Muslim law ; but its definition shall be in the hands of a legislature representing the people which will, by deliberation and discussion, decide how to apply the principles of Islam to the needs of the community in varying circumstances. If the

people of Pakistan are overwhelmingly Muslims and their representatives in the legislature represent their opinions and views, it is obvious that they will be honest guardians of the teachings of Islam.

The political sovereign shall be the people who will elect and dismiss their legislatures and their governments. We have accepted this principle in our Objectives Resolution wherein we have recognised that the people are the vehicle of the authority delegated by God to the State of Pakistan.

The real sovereign will be basically the principles of Islam which will influence the public mind only if the problems are brought into the public forum and discussed at full length. If we want that Islam should be the real sovereign in Pakistan, we will have to strengthen the Islamic elements in the education of our children and our people. And one of the methods of education is that the problems facing the community shall be discussed openly, permitting all those who have something to say to participate in the discussion.

This is how I view this problem. I do not expect that all will agree with me. I am fully aware that I have dealt with an exceedingly controversial topic, in discussing which perhaps I have run counter to the belief of many persons in certain places, but then I would have failed in my duty, if I had not placed my convictions before you in this meeting.

GLOSSARY

<i>Ulema</i>	.. The learned, specially those learned in Islamic theology.
<i>Shari'</i>	.. The Muslim Law.
<i>Hadith</i>	.. Traditions of the Prophet.
<i>Millat</i>	.. Nation.
<i>Sunnah</i>	.. Traditions of the Prophet.

APPENDIX

Text of the Objectives Resolution adopted by the Constituent Assembly of Pakistan on March 12, 1949.

“ In the name of Allah, the Beneficent, the Merciful ;

WHEREAS sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust ;

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent State of Pakistan ;

WHEREIN the State shall exercise its powers and authority through the chosen representatives of the people ;

WHEREIN the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed ;

WHEREIN the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as

set out in the Holy Quran and the Sunna * ;

WHEREIN adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures ;

WHEREBY the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed ;

WHEREIN shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality ;

WHEREIN adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes ;

WHEREIN the independence of the judiciary shall be fully secured ;

WHEREIN the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded ;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity."

* Traditions of the Holy Prophet.

